

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13621, of the Christian Reformed Church of Washington, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 3101.41 to use the basement of the subject premises as a day care center for thirty children, three teachers and two teacher's aides in an R-1-B District at the premises 5911 New Hampshire Avenue, N.E., (Square 3714, Lot 119).

HEARING DATE: December 9, 1981
DECISION DATE: January 6, 1982

FINDINGS OF FACT:

1. At the Public Meeting of September 4, 1981 the Chair denied the applicant's Motion for an expedited hearing. The Chair found no special merit in the application that warranted its receiving any special treatment.
 2. The application appeared on the preliminary calendar for the Public Hearing of December 9, 1981, since the applicant did not comply with Section 3.33 of the Supplemental Rules of Practice and Procedure before BZA. The Rules require that the subject property be posted at least ten days before the Public Hearing. In this instance the property was posted for nine days. The opposition present requested that the application go forward on its merits. The Chair waived the requirement of the Rules and determined that the case would be heard.
 3. The subject site is located on the southeast corner of the intersection of New Hampshire Avenue and Oneida Street and is known as 5911 New Hampshire Avenue, N.E. It is in an R-1-B District. Oneida Street is one-way eastbound.
 4. The site has 98.04 feet of frontage on New Hampshire Avenue and 118.45 feet of frontage on Oneida Street, and consists of approximately 13,000 square feet of land area. The site is developed with a one-story brick church building. The southern lot line of the property abuts a fifteen foot wide alley. This alley appears on the Baist Atlas map as bisecting Square 3714, but in actuality it is a paper alley, only improved with gravel from New Hampshire Avenue east midway to the subject site. The Church has been using this small section of the alley to provide access to rear parking spaces. None of the other
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dwellings which have frontage on the alley use it for access to their property.

5. North of the site across Oneida Street are single family detached dwellings in the R-1-B District. East of the site and immediately adjoining the site is the Church's parsonage in an R-1-B District. South of the Church across the fifteen foot wide alley there are the rear yards of single family detached dwellings in the R-1-B District on Oglethorpe Street. West of the site across New Hampshire Avenue there is a wooded area comprising Federal property.

6. The applicant's lessee proposed to use the basement of the subject premises as a day care center. The center proposed to operate from 7:00 A.M. to 6:00 P.M., Monday through Friday. The children's ages would have ranged from two to six years. There would have been thirty students, three teachers and two teacher's aides. The center would have been called the Children's Corner Learning Center.

7. Paragraph 3101.41 provides that the Board may approve an application for a private school in the form of a Kindergarten or serving a pre-school group if:

- a. It will have no articles of commerce for sale;
- b. It is so located and the activities to be conducted therein will be such that it is not likely to become objectionable to adjoining and nearby property because of noise, traffic, number of students, or other objectionable conditions;
- c. The use will be reasonably necessary or convenient to the neighborhood which it is proposed to serve. The enrollment at such school will be limited primarily to children residing in that neighborhood; and,
- d. There shall be provided on the same lot with such use not less than 100 square feet of play area for each child.

In addition, under Sub-section 7202.1, there must be provided four parking spaces on the subject site.

8. The proposed center would have no articles of commerce for sale.

9. The proposed center will not conflict with any other church activities. There is sufficient side and rear yard space to effectively buffer any noise which could penetrate through the brick church building from the classroom area in the basement.

10. The applicant testified that there is room on the Oneida Street frontage to park approximately four automobiles. In addition, the applicant testified that the Church utilizes the unimproved gravel paved alley from New Hampshire Avenue which is located to the rear of the site and that the Church is the sole user of this alley to gain access to space for approximately seven on-site parking spaces, marked by the location of wheel stops. The pastor of the Church and several church members testified that at Sunday worship, at least ten cars can be accommodated on the lot, that the cars can maneuver on the lot and exit back on New Hampshire Avenue and that the cars do not have to back out.

11. The operator of the center testified that the enrollment of the school would come primarily from within a ten block radius of the site. There were positive inquiries from over seventeen persons living in the area who would be interested in sending children to the center. In the definition of the neighborhood, the operator did not limit the northern or eastern boundaries to the District of Columbia line, but anticipated having students from Maryland.

12. The applicant testified that there were no day care centers in the immediate area other than one located on Sheridan and North Capitol Street, N.E. with a large capacity already. A center at Blair Road and Kansas Avenue, N.W. has a limited area only large enough to accommodate ten children and offers only custodial care. The proposed center would offer a learning curriculum, carefully developed by qualified teachers with degrees in Early Childhood Education with the help of a day care consultant.

13. The applicant would provide approximately 1050 square feet of inside space and 1100 square feet of outside space as play area. This would provide recreational space for only twenty-one children, not the thirty children requested.

14. The Office of Planning and Development, by report dated December 4, 1981, recommended that the application be approved. The OPD noted the applicant's compliance with the off-street parking requirements, the buffer separating the exterior play area from nearby dwellings, and the presumed convenience of such a facility to the neighborhood discussed earlier. The OPD was of the opinion that the designated play area is more than adequate to facilitate thirty small children playing in shifts under supervised conditions. It was OPD's view that the center's operation will not substantially impair the intent, purpose or integrity of the Zoning Regulations. At the public hearing, the OPD noted that the report was based on the measurements supplied by the applicant and were not the same as those presented at the public hearing. The OPD questioned if the required

parking met the nine foot by nineteen foot requirements of the Zoning Regulations and the adequacy of the play area requirements. The Board, for reasons discussed below, does not concur in the OPD recommendations.

15. There was opposition to the application at the public hearing and in letters of record by the Block 17 of the Lamond Riggs Citizens Association and the Association itself. There were also petitions submitted in opposition to the application. The grounds of opposition were as follows:

- a. Although there would be no articles of commerce for sale, the center is still a commercial enterprise since it charges for its services and businesses are not permitted in a residentially zoned district.
 - b. The proposed establishment would change the current traffic pattern flowing into the community. A day care center where thirty children would be delivered and picked up would pose a traffic problem. Further, special activities that would be sponsored by the proposed school would add to the parking dilemma. Delivery of goods, trip busses and other cars could very well create additional traffic problems. Also, parents delivering children could find it convenient to park for the day, since there is a bus stop located in front of the Church. Oneida Street could become a parking lot for transients.
 - c. The school is not necessary to the neighborhood. A canvas of the community produced few children between the ages of two and five years. A survey of Oneida Street, N.E. revealed four children among approximately seventy homes between the ages of two and five years. There are none on Peabody and Quackenbos Streets, between New Hampshire Avenue and 3rd Street, N.E. The same holds true for 3rd Street from Eastern Avenue to Nicholson Street and the north side of Oglethorpe Street from New Hampshire Avenue to 3rd Street, N.E. The same is generally true for the entire community which is an older well established community of twenty-five years where most of the children are fully grown and residing in their own homes away from this community. Further, there are eight existing day care centers and/or nursery schools already established in the community or nearby. Of the eight schools, five are within five minutes of the area and the proposed day care site. Three others are within ten minutes from the community. The proposed day care center will be of no benefit
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to the community, and is not needed. According to the applicants, drawing upon Maryland residents is planned to enhance enrollment.

- d. The applicants are not residents of the District of Columbia and have no meaningful ties to the community. They are Maryland residents who chose to establish a commercial establishment in this community rather than their own.
- e. When obtaining signatures in favor of the center, the lessees misrepresented themselves. The lessees did not explain the Zoning Regulations nor did they reveal their residences in Maryland. When the community residents were so advised, they rescinded their signatures and signed petitions against the proposal.

16. Advisory Neighborhood Commission 4B by letter of December 4, 1981 and at the public hearing, recommended that the application be denied on the following grounds:

- a. Traffic congestion due to one-way street.
- b. The need does not exist within the community, as there are few children of that age group as residents.
- c. Insufficient play area.
- d. Location is near main thoroughfare without protective area, e.g., fencing.

17. The record was left open at the end of the public hearing for the applicant to submit a plat drawn to scale giving the exact demensions of the play area, the parking area with the spaces marked off and the location and sizes of fences, if any. Some evidence was submitted, but it was not responsive to the Board's request.

18. The Board is required by statute to give great weight to the issues and concerns of the ANC. In addressing these as well as those of the other parties in opposition, the Board is first compelled to state that the granting or denying of the relief requested is controlled by the Zoning Regulations. There is nothing in the Zoning Regulations that states that non-D.C. residents cannot carry on an occupation, or business in the District of Columbia. In fact, the subject Church, esteemed in its community, has members from outside the District of Columbia. A church, school or day care center is not considered a business and the fact that fees or stipends are paid does not make them commercial ventures. Much contradictory evidence has been submitted in reference to an adverse traffic impact. The

Board need not resolve this issue since it is not dispositive of the application. What is dispositive of this application is whether the proposed use is reasonably necessary or convenient to the neighborhood which it is proposed to serve, whether the enrollment of the school will be limited primarily to children residing in the neighborhood and whether there is provided on the same lot with such use not less than 100 square feet of play area for each child.

19. The Board finds that the applicant has failed through substantial evidence to prove that the use is needed in the neighborhood, meets the requirements of Paragraph 3101.41 and to contradict the opposition's position as set forth in Finding No. 15, of the lack of need for the proposed center. Many services similar to those proposed already exist in the neighborhood, as evidenced by the specific facilities cited by the opposition, in contradiction to the one facility cited by the applicant. Contrary to the applicant's assertions regarding enrollment, there is a lack of children in the age group between two and five years and the applicant plans to enroll children from the State of Maryland to complete enrollment. As to the play area requirement, the Board finds that the applicant has not established that there is 3000 square feet of such area to accommodate the number of children proposed. The Board further notes that the applicant requested no variance from the play area requirements.


CONCLUSIONS OF LAW AND OPINION:

Based on the record, the Board concludes that the applicant is seeking a special exception, the granting of which requires a showing through substantial evidence that the applicant has complied with the requirements of Paragraph 3101.41 and that the relief requested under Sub-section 8207.2 can be granted as in harmony with the general purpose and intent of the Zoning Regulations and will not tend to affect adversely the use of neighboring property. The Board concludes that based on Finding Nos. 11, 13, 15, 18 and 19, the applicant has not met the burden of proof. The Board concludes that it has given the great weight entitled to the ANC recommendations. Accordingly, it is ORDERED that the application is DENIED.

VOTE: 5-0 (Lindsley Williams, Charles R. Norris, Douglas J. Patton, William F. McIntosh and Connie Fortune to DENY).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: JUL 16 1982

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."